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*1704*

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/759,958 01/12/01 CHU

J W9298-03

EXAMINER

IM52/0813

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ART UNIT

PAPER NUMBER

1714

DATE MAILED:

08/13/01

*4*

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	Examiner	Group Art Unit	

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

**Period for Response**

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication .
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

**Status**

Responsive to communication(s) filed on \_\_\_\_\_.

This action is **FINAL**.

Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

**Disposition of Claims**

Claim(s) 1, 2, 4, 6-12, 14-16, 18, 20-26, 28, 29 is/are pending in the application.

Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

Claim(s) \_\_\_\_\_ is/are allowed.

Claim(s) 1, 2, 4, 6-12, 14-16, 18, 20-26, 28, 29 is/are rejected.

Claim(s) \_\_\_\_\_ is/are objected to.

Claim(s) \_\_\_\_\_ are subject to restriction or election requirement.

**Application Papers**

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119 (a)-(d)**

Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

**Attachment(s)**

Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_  Interview Summary, PTO-413

Notice of References Cited, PTO-892  Notice of Informal Patent Application, PTO-152

Notice of Draftsperson's Patent Drawing Review, PTO-948  Other \_\_\_\_\_

**Office Action Summary**

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Claims 1, 2, 4, 6-12, 14-16, 18, 20-26, 28 and 29 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-52 of U.S. Patent No. 6,180,708. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of this application are within the scope of the claims of the patent because "at least about 15% of said adsorbent" encompasses the "at least about 55%" of the claims of the patent.

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 2, 4, 6-12, 14-16, 18, 20-26, 28 and 29 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Sakai or Gust or Kolaitis. Applicants' claims are directed to compositions comprising thermoplastic material, at least 15% adsorbent, and at least 2% wax. Sakai discloses a composition comprising a thermoplastic material and 5 to 30 parts silica gel or zeolite per 100 parts thermoplastic material. Sakai discloses

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wax in column 2, line 45. In the Abstract Gust discloses a composition comprising thermoplastic material, 3 to 12% wax, and 3 to 15% particulate material. In column 19, lines 57 and 58 Gust discloses that the particulate material may be silica gel. Kolaitis discloses a foam control agent comprising a silicone resin and zeolite. See the Abstract. Kolaitis discloses wax in column 2, line 16 and column 12, line 10. In Sakai it would be obvious to one of ordinary skill in the art to formulate compositions comprising thermoplastic material, at least 15% silica gel or zeolite, and 2% wax. In Gust it would be obvious to one of ordinary skill in the art to formulate compositions comprising thermoplastic material, 15% silica gel, and 3 to 12% wax. In Kolaitis it would be obvious to one of ordinary skill in the art to formulate compositions comprising 1 to 30 parts silicone resin, 70 to 99 parts zeolite, and 2% wax. The motivation is that it is within the skill of one in the art to select a suitable percentage of wax, such as 2%, to be utilized in the compositions of thermoplastic material, zeolite or silica gel, and wax taught by these three references.

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Any inquiry concerning this communication should be directed to Paul Michl at telephone number (703) 308-2451.

The Examiner's supervisor is Vasu Jagannathan phone number (703) 306-2777. The fax number for this group is (703) 305-3599.

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August 8, 2001

  
PAUL R. MICHL  
PATENT EXAMINER  
ART UNIT 156